1. Rejection of Claims 1-16, 18-27, 35 and 36 Under 35 USC §102(e)

The aforementioned Final Office Action of January 12, 2007 again rejected claims 1-16, 18-27, 35 and 36 under 35 USC §102(e) as being anticipated by Tillman et al. (U.S. Patent No. 6,496,980 – hereafter Tillman). The Examiner again contended that Tillman discloses each and every element of these claims. In response to the applicant's argument for patentability of these claims, which was presented in the applicant's Response filed October 13, 2006, the Examiner contended the following:

(i)   "Applicant argues that Tillman does not teach requesting a base quality version of a program includes request[ing] as many layers, in order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network. However, the Examiner disagrees. Tillman teaches receiving a base layer of the video stream in which the base layer is stored in the client cache. <u>The client then sends a message to the server to transmit predetermined amount of video data for enhancement layer from server cache</u>. The server will transmit as many enhancement layers based on the user input. The multiple enhancement layers received by the client system may be stored in the client cache, provided that there is available storage. Thus, a layered hierarchy of enhancement layers may be employed, as long as the server system creates the specific configuration used and communicates this ... configuration information to the client system (col. 9, lines 44-67, col. 10, lines 1-34). <u>The claim does not require that by requesting a base quality version means requesting base quality version in which the base quality version comprises many layers</u>. By giving the broadest interpretation of the present application's claim language, Tillman does teach requesting a base quality version of a program includes request[ing] as many layers, in order of their position in hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network."

The applicant respectfully disagrees with this contention of anticipation for the following reasons.

Expanding on what was stated in the applicant's aforementioned Response of October 13, 2006, the **applicant claims** a computer-implemented process, a client-server based computer network, and computer-executable instructions in which a particular client computer's (**client's**) **_initial_ request for an audio and/or video (A/V) program is _custom tailored_ to the actual network bandwidth available** to the

particular client. More particularly, the applicant claims a process, network and instructions in which a particular client's *initial* request for an A/V program involves **requesting a "base quality" version of the program** (which consists of a layered unicast having hierarchically related layers) where, as part of this initial request, the **client requests *as many* layers, *starting* with a base layer, as can be transmitted without exceeding the network bandwidth available** to the particular client.

In contrast, **Tillman expressly teaches that a client's initial request for a program results in the server sending *only* a base layer and *no more*.** No enhancement data is *ever* sent in response to the client's *initial* request. Rather, Tillman teaches that the enhancement data is not sent to the client *until* the client makes a *subsequent* request "to provide *replay* for a selected video segment." (refer to column 7, lines 35-50) Thus, Tillman teaches that the **amount of program data sent to the client in response to the client's initial request is *always* the same (i.e. *just* the base layer), *regardless* of the actual network bandwidth available to the particular client**. Nowhere in the various sections of Tillman cited by the Examiner, or anywhere else in Tillman for that matter, is it taught or even suggested that the client *custom tailor* its initial request for a program to the actual network bandwidth available to the client by requesting a "base quality" version of the program, where this request involves requesting *as many* layers, *starting* with a base layer, as can be transmitted without exceeding the network bandwidth available to the particular client, as is claimed by the applicant. The **Examiner actually *admitted* to this fact in a previous Office Action dated January 6, 2005**. More particularly, on page 3 of that Office Action the Examiner stated: "However, Tillman does not explicitly disclose ... wherein requesting a base quality version of the program from a server over the network comprises requesting as many layers in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network."

In response to the Examiner's contention noted in item (i) above that "[t]he client then sends a message to the server to transmit predetermined amount of video data for enhancement layer from server cache," as noted in the preceding paragraph, Tillman

teaches that this message is *not* part of the client's *initial* request for a program. Rather, Tillman teaches the following: "When a request is received by the graphical user interface 48 to provide *replay* for a selected video segment, server system 32 sends additional video data for the selected video segment in one or more enhancement layers 54." (refer to column 7, lines 38-41) Thus, as discussed above, the message that the examiner is referring to is part of the client's *subsequent* request to *replay* a program. This fact is further reinforced by Tillman in Figure 6 (refer to elements 100 and 104) and the following teaching:

> "When the multimedia content being transmitted represents a live event, server system 32 transmits video data representing the live event on the *base layer* of the stream ... the server system ... stores the enhancement layers in the server cache 38 for *future* use during *replay*." (refer to column 9, lines 58-64 – emphasis added)

In response to the Examiner's contention noted in item (i) above that "[t]he claim does not require that by requesting a base quality version means requesting base quality version in which the base quality version comprises many layers," the applicant respectfully disagrees since independent **claims 1, 25 and 27 specifically recite the following: "wherein the base quality version of the program comprises layer data of a layered unicast having hierarchically related *layers*** in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy."

A prima facie case of anticipation is established only when the Examiner can show that the cited reference teaches *each* of the claimed elements of a rejected claim. In this case, based on the remarks presented above, the Examiner has *not* shown that the Tillman reference teaches the subject application's claimed feature of a client computer requesting a base quality version of a program, which includes the client computer requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from a server to the client without exceeding the available bandwidth of the network. Thus, rejected claims 1-16, 18-27,
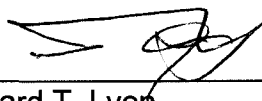
35 and 36 recite a feature that is not taught in the cited art, and as such, a prima facie case of anticipation can not be established. Accordingly, it is respectfully requested that the rejection of these claims be reconsidered based on the following novel language exemplified in claim 1:

> "requesting a *base quality* version of the program from a server over the network, wherein the base quality version of the program comprises layer data of a layered unicast having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy, and wherein requesting a base quality version of the program from a server over the network comprises requesting *as many* layers, in the order of their position in the hierarchy *starting* with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network;" (emphasis added)

2. Summary

For the reasons set forth above, the applicant believes that rejected claims 1-16, 18-27, 35 and 36 of the subject application are in condition for allowance. Reconsideration of the rejection of these claims is respectfully requested and allowance of these claims at an early date is courteously solicited.

Respectfully submitted,

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